

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

SIDNEY KANG, DECEASED, by and through) Case No.: 1:23-cv-01519-KES-CDB  
his Co-Successors in Interest, KATIE YOUNG )  
and JOHN KANG, as Co-Successors in )  
Interest and individually, ) ORDER GRANTING IN PART AND DENYING  
Plaintiffs, ) IN PART DEFENDANTS' PARTIAL MOTION TO  
v. ) DISMISS PLAINTIFFS' FIRST AMENDED  
 ) COMPLAINT  
 ) (Docs. 15, 21)  
OFFICER CUSTER; CHRISTIAN PFEIFFER;)  
and DOES 1 through 10, inclusive, )  
Defendants. )

Plaintiffs Katie Young and John Kang, individually and as co-successors in interest to decedent Sidney Kang, bring this action against Defendants Officer Custer, Warden Pfeiffer, and Does 1-10, alleging failure to protect and supervisorial liability under 42 U.S.C. § 1983; negligence; negligent supervision, training, hiring, and retention; wrongful death; intentional infliction of emotional distress (against Officer Custer only); and a violation of the Bane Act, California Civil Code § 52.1. Doc. 14 (“FAC”). Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendants Custer and Pfeiffer move to dismiss Plaintiffs’ claims for intentional infliction of emotional distress and for violation of the Bane Act. Doc. 21. Plaintiffs filed an opposition to the motion, to which Defendants replied. Docs. 24, 25. Plaintiffs oppose the motion to dismiss the Bane Act claim, but they agree that the intentional infliction of emotional distress claim should be dismissed with prejudice. Doc. 24. The Court found this matter

1 suitable for resolution without a hearing pursuant to Local 230(g). Doc. 26. For the reasons set forth  
2 below, the Court grants in part and denies in part Defendants' partial motion to dismiss.<sup>1</sup>

3 **I. Background**

4 The Court recites here the facts alleged in the FAC that are relevant to the instant motion to  
5 dismiss. As noted below, the Court must presume the factual allegations within the FAC to be true  
6 when evaluating a motion to dismiss. *Murguia v. Langdon*, 61 F.4th 1096, 1106 (9th Cir. 2023)  
7 (citing *Usher v. City of L.A.*, 828 F.2d 556, 561 (9th Cir. 1987)).

8 The instant litigation concerns the attack, and subsequent death, of Sidney Kang, an inmate at  
9 Kern Valley State Prison, by two other inmates. FAC ¶¶ 17, 19. Kang was transferred to Kern Valley  
10 State Prison around May 2014. FAC ¶ 12. Around April 4, 2022, Kang emailed his uncle, informing  
11 him that Defendant Custer, the captain of the recreational yard, "was endangering [Kang's] life and  
12 that if [Kang] gets hurt," it would be due to Defendant Custer's actions. FAC ¶ 13. The email further  
13 stated that Defendant Custer and other correctional officers knew that Kang's group in the prison was  
14 at odds with another group within the prison, that the correctional officers were favoring the other  
15 group, and that "the correctional officers, including Officer Custer, were going to let one of [the  
16 members of Kang's group] out to the yard against six inmates from the other group" and were going to  
17 "set [Kang] up to get targeted and hurt." FAC ¶ 13. Kang and his uncle had several phone  
18 conversations regarding Kang's concerns about his safety in the prison, during which Kang informed  
19 his uncle that he was he was going to file a complaint against the correctional officers. FAC ¶ 14.

20 The FAC alleges that Kang filed such a complaint with Kern Valley State Prison and the  
21 California Department of Corrections and Rehabilitation ("CDCR"). FAC ¶ 14. According to the  
22 FAC, Kang's complaint to prison officials asserted "that his and the lives of his friend group were in  
23 danger due to the conduct of the correctional officers, including Officer Custer," specifically because  
24 "they would target him by placing him in the recreation yard by himself to get attacked by a rival  
25 group." FAC ¶ 14. The FAC alleges that Defendant Pfeiffer and Defendant Custer "were aware of

---

27 <sup>1</sup> Defendants initially filed their motion to dismiss on March 12, 2024. Doc. 15. Plaintiffs refiled their  
28 motion to dismiss on March 25, 2024, re-noticing the hearing before the undersigned. Doc. 21. For  
convenience, the Court refers below to the copy of the motion filed at Doc. 21, but both filings are  
resolved by this Order.

1 [Kang's] complaint(s) against the correctional officers, including Officer Custer.” FAC ¶ 14. Further,  
2 other members of Kang's group had filed similar complaints against Defendant Custer and other  
3 correctional officers. FAC ¶ 15. The FAC alleges that Defendants “failed to conduct any  
4 investigation into Mr. Kang's complaint(s) and/or prevent other rival inmates from attacking Mr.  
5 Kang.” FAC ¶ 14. The FAC further alleges that Defendants failed to conduct any investigation into  
6 the complaints submitted by members of Kang's group. FAC ¶ 15.

7 Thereafter, on May 5, 2022, “Correctional Officer Custer and other unknown correctional  
8 officers . . . plac[ed]” Kang in the recreational yard with two members of a rival group, Anthony  
9 Ramirez and Michael Caldera, “without any allies and/or protection from the other inmates that [sic]  
10 were out to get him.” FAC ¶¶ 17, 19; *see also* FAC ¶ 17 (Kang “was taken out to the recreational  
11 yard”). The correctional officers who took him to the recreational yard did not permit Kang's cellmate  
12 to go with him. FAC ¶¶ 16, 17. The FAC alleges that it is against the policies of CDCR and/or Kern  
13 Valley State Prison to “escort [an inmate] to the recreation yard without any allies.” FAC ¶ 16. Once  
14 Kang was in the yard, inmates Ramirez and Caldera attacked Kang using inmate-manufactured  
15 weapons, killing him. FAC ¶ 17.

16 The FAC alleges Defendants Pfeiffer and Custer “were fully aware of rival factions inside the  
17 prison” and “knew that [Kang's] friend group were rivals to the group that Anthony Ramirez and  
18 Michael Caldera were part of.” FAC ¶ 16. The FAC alleges that Defendants “should have never  
19 allowed [Kang] to be taken to the recreation yard by himself.” FAC ¶ 16. The FAC further alleges  
20 that Defendants Pfeiffer and Custer “knew Anthony Ramirez's . . . tendency to assault other inmates  
21 and to possess or make deadly weapons, which may be used to attac[k] other inmates” given that, in  
22 2020, Ramirez assaulted an inmate and was sentenced to an additional twelve years of prison time, and  
23 in 2021, Ramirez was sentenced to an additional two years of prison time for possessing or  
24 manufacturing a deadly weapon. FAC ¶ 18.

25 Kang was treated for his injuries at Kern Valley State Prison, but, approximately 40 minutes  
26 after the attack, he was pronounced dead at 10:41 a.m. FAC ¶ 17. The FAC alleges generally that  
27 Defendants failed to provide adequate medical care or to timely summon medical care for Kang after  
28

1 he was stabbed, but it does not set out any specific conduct in this regard by either Defendant in the  
2 brief period between the stabbing and Kang's death. *See, e.g.*, FAC ¶¶ 21, 72, 74.

3 **II. Legal Standard**

4 Federal Rule of Civil Procedure 8(a) requires that a pleading contain "a short and plain  
5 statement of the claim showing that the pleader is entitled to relief." Federal Rule of Civil  
6 Procedure 12(b)(6) allows a party to bring a motion to dismiss for "failure to state a claim upon which  
7 relief can be granted." To survive a motion to dismiss, a complaint must plead "sufficient factual  
8 matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556  
9 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has  
10 facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable  
11 inference that the defendant is liable for the misconduct alleged." *Id.* "Threadbare recitals of elements  
12 of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* "In assessing  
13 a Rule 12(b)(6) motion to dismiss, the court must take all factual allegations as true and draw all  
14 reasonable inferences in favor of the nonmoving party." *Murguia*, 61 F.4th at 1106 (citing *Usher*, 828  
15 F.2d at 561).

16 If a court dismisses a complaint for failure to state a claim, it should "freely give leave" to  
17 amend "when justice so requires." Fed. R. Civ. P. 15(a)(2). The "underlying purpose of Rule 15 [is] to  
18 facilitate decisions on the merits, rather than on the pleadings or technicalities." *Lopez v. Smith*, 203  
19 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (cleaned up). However, a court has discretion to deny leave  
20 to amend due to "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure  
21 to cure deficiencies by amendment previously allowed, undue prejudice to the opposing party by  
22 virtue of allowance of the amendment, [or] futility of amendment." *Leadsinger, Inc. v. BMG Music  
Pub.*, 512 F.3d 522, 532 (9th Cir. 2008).

24 **III. Discussion and Analysis**

25 **A. The Bane Act**

26 The Bane Act provides a cause of action when "[a] person or persons, whether or not acting  
27 under color of law, interferes by threat, intimidation, or coercion, or attempts to interfere by threat,  
28 intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights

1 secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or  
2 laws of [California].” Cal. Civ. Code § 52.1(b). To sufficiently plead a violation of the Bane Act, “a  
3 plaintiff must show (1) intentional interference or attempted interference with a state or federal  
4 constitutional or legal right, and (2) the interference or attempted interference was by threats,  
5 intimidation or coercion.” *Allen v. City of Sacramento*, 234 Cal. App. 4th 41, 67 (2015) (citations  
6 omitted). “The essence of a Bane Act claim is that the defendant, by the specified improper means  
7 (i.e., ‘threats, intimidation or coercion’), tried to or did prevent the plaintiff from doing something he  
8 or she had the right to do under the law or to force the plaintiff to do something that he or she was not  
9 required to do under the law.” *Cornell v. City & Cnty. of S.F.*, 17 Cal. App. 5th 766, 792 (2017)  
10 (internal quotations omitted).

11 Defendants assert that, to adequately state a claim under the Bane Act, Plaintiffs must allege  
12 threats, intimidation, or coercion separate from the alleged constitutional violation, and that Plaintiffs’  
13 Bane Act claims must be dismissed because the FAC fails to do so. *See* Doc. 21 at 2:2-4. More  
14 particularly, Defendants assert that the FAC fails to allege that “Kang was unable to simply refuse to  
15 go to [the] yard” or that Defendants “personally placed [Kang] on the yard that day by way of threats,  
16 intimidation, and/or coercion.” *Id.* at 5:17-20. Plaintiffs argue that, under *Cornell*, the FAC need not  
17 allege threats, intimidation, or coercion separate from the alleged constitutional violation. Doc. 24 at  
18 6:26-7:7.

19 Contrary to Defendants’ argument, under the Bane Act, the offending threat, intimidation, or  
20 coercion need not be independent from the coercion associated with an alleged constitutional violation  
21 that is inherently coercive. *See Cornell*, 17 Cal. App. 5th at 799-800, 802 n.31 (where an unlawful  
22 arrest, which is inherently coercive, is properly pleaded, plaintiff need not allege a further coercive,  
23 intimidating, or threatening act). In *Cornell*, the California Court of Appeal acknowledged the case  
24 law reflected confusion regarding the pleading requirements of the Bane Act and noted that the  
25 decision in *Shoyoye v. County of Los Angeles*, 203 Cal. App. 4th 947 (2012), had been mistakenly  
26 cited for the proposition that the Bane Act always “requires a showing of coercion independent from  
27 the coercion inherent” in the constitutional violation. *Cornell*, 17 Cal. App. 5th at 795-801. The  
28 *Cornell* court noted that “depending on the right alleged to have been interfered with, physical force is

1 not required” as part of the alleged constitutional violation for the constitutional violation to be  
 2 coercive. *Id.* at 802 n.31 (citing approvingly to both *McKibben v. McMahon*, Case No. EDCV 14-  
 3 02171 JBG (SPx), 2015 WL 10382396, at \*3 (C.D. Cal. Apr. 17, 2015) (forcing gay, bisexual, or  
 4 transgender inmates to accept segregated housing with fewer privileges than other inmates was  
 5 “coercive choice” satisfying Bane Act’s coercion requirement) and *M.H. v. Cnty. of Alameda*, 90  
 6 F.Supp.3d 889, 898 (N.D. Cal. 2013) (deliberate indifference to prisoner’s medical needs satisfied  
 7 coercion element of Bane Act)).

8 In such cases involving an alleged inherently coercive constitutional violation, the plaintiff  
 9 instead must prove that the defendant acted with “a specific intent to violate the . . . right.” *See id.* at  
 10 801. The “specific intent standard” is met when (1) “the right at issue [is] clearly delineated and  
 11 plainly applicable under the circumstances of the case” and (2) “the defendant commit[ed] the act in  
 12 question with the particular purpose of depriving the citizen victim of his enjoyment of the interests  
 13 protected by that . . . right.” *Id.* at 803. “Reckless disregard of the ‘right at issue’ is all that [is]  
 14 necessary” to prove the second prong. *Id.* at 804. Therefore, “if a plaintiff adequately pleads a claim  
 15 for deliberate indifference, which requires a pleading of reckless disregard, then he has sufficiently  
 16 alleged the intent required for the Bane Act claim.” *Luttrell v. Hart*, No. 5:19-cv-07300-EJD, 2020  
 17 WL 5642613, at \*5 (N.D. Cal. Sept. 22, 2020) (citation omitted).

18 “[T]he federal court must follow [a relevant] state intermediate appellate court decision unless  
 19 the federal court finds convincing evidence that the state’s supreme court likely would not follow it.”  
 20 *Reese v. Cnty. of Sacramento*, 888 F.3d 1030, 1042 (9th Cir. 2018) (citing *Ryman v. Sears, Roebuck &*

21 Co., 505 F.3d 993, 994 (9th Cir. 2007)). In *Reese*, the Ninth Circuit determined there was “no  
 22 ‘convincing evidence that the state’s supreme court likely would not follow’ *Cornell*” in its analysis of  
 23 the Bane Act. *Id.* at 1043. Accordingly, this Court will follow *Cornell*’s reasoning. Though this is  
 24 not an excessive force or unreasonable seizure case, as was specifically addressed by *Cornell* and  
 25 discussed in *Reese*, this case resembles the federal district court cases that the *Cornell* court cited to  
 26 approvingly, in which no physical force was used, but where coercion was inherent in the alleged  
 27 violative act, and therefore, the specific intent test applied. *See Cornell*, 17 Cal. App. 5th at 802 n.31;  
 28

1 *Luttrell*, 2020 WL 5642613, at \*5 (coercion element of Bane Act met where an inmate adequately  
2 pleaded deliberate indifference to his safety).

3 Here, Kang was an inmate in prison, an inherently coercive environment. The FAC alleges  
4 that Defendant Custer intentionally had him “placed” in the recreational yard with rivals and without  
5 any allies. The FAC alleges that Defendant Custer and other officers prevented Kang’s cellmate from  
6 going to the yard with him, and that this was in violation of CDCR policy. The FAC also sufficiently  
7 alleges that Defendant Pfeiffer was on notice, through Kang’s prior complaint to the prison, that  
8 Defendant Custer and others intended to set up an attack on Kang by other inmates. According to the  
9 FAC, Kang’s complaint to prison authorities asserted that Defendant Custer intended to target him by  
10 placing him in the yard by himself to be attacked, the exact situation that Plaintiffs allege ultimately  
11 occurred, and that Kang communicated to his uncle his fear that the officers intended to put him on the  
12 yard alone with rival inmates. Assuming these allegations to be true, as the Court must on this motion,  
13 the FAC sufficiently alleges the necessary element of coercion. Defendants’ argument that Kang  
14 could have simply chosen not to go to the recreational yard is not consistent with the FAC’s  
15 allegations.

16 Therefore, Plaintiffs need not allege a separate threatening, coercive, or intimidating action to  
17 properly plead their Bane Act claim. Rather, they must meet the specific intent test and show that (1)  
18 “the right at issue [is] clearly delineated and plainly applicable under the circumstances of the case”  
19 and (2) “the defendant commit[ed] the act in question with the particular purpose of depriving the  
20 citizen victim of his enjoyment of the interests protected by that … right,” which can be shown by  
21 pleading reckless disregard of the right. *Cornell*, 17 Cal. App. 5th at 803, 804.

22 Here, prong one is clearly met as to the allegations concerning Kang’s safety. Plaintiffs plead  
23 that Defendants violated Kang’s rights under the Eighth Amendment and the California Constitution  
24 “to be free from deliberate indifference to his safety and serious medical needs while in custody as an  
25 inmate,” and under the California Constitution “to enjoy and defend life . . . and pursue and obtain  
26 safety.” FAC ¶ 73. These rights are clearly delineated and applicable under the circumstances as  
27 discussed above – Kang died from injuries sustained in an attack from other inmates in the prison  
28 yard, which he alleges Defendant Custer orchestrated with other correctional officers. And he alleges

1 Defendant Pfeiffer failed to take any measures to prevent the attack despite being on notice of  
2 Defendant Custer's intent to set up the attack.

3 Prong two is also met in this regard, as Plaintiffs adequately plead that Defendants "committed  
4 the act in question with the particular purpose of depriving" Kang of the right to safety while in  
5 custody under the Eighth Amendment and his rights under Article 1 of the California Constitution.  
6 *See Cornell*, 17 Cal. App. 5th at 803.

7 As to Defendant Custer, Plaintiffs plead that Defendant Custer intended to and carried out a  
8 plan to put Kang in danger by placing him in the recreational yard with members of a rival group  
9 within the prison and without any allies. Plaintiffs allege that Kang had expressed fear that Defendant  
10 Custer was conspiring to have him harmed, and that Kang submitted at least one official complaint to  
11 prison authorities alerting them to this concern. Plaintiffs further allege that "Officer Custer plac[ed]"  
12 Kang alone in the recreational yard with members of a rival group, knowingly, in violation of the  
13 prison's policy. FAC ¶ 19. Therefore, the Court finds that the FAC adequately pleads that Defendant  
14 Custer acted "with the particular purpose" of depriving Kang of the constitutional right to be free from  
15 deliberate indifference to his safety under the Eighth Amendment and of his rights under Article 1 of  
16 the California Constitution. Therefore, Plaintiffs have sufficiently pleaded a claim against Defendant  
17 Custer under the Bane Act as to his conduct with respect to inmate Kang's safety.

18 As to Defendant Pfeiffer, Defendants assert that Plaintiffs fail to show that he acted with "the  
19 particular purpose" of depriving Kang of his constitutional rights. The Court finds that the FAC does  
20 not allege affirmative acts on Defendant Pfeiffer's part to establish plausibly that Defendant Pfeiffer  
21 acted with the deliberate intention of depriving Kang of his constitutional rights; however, Plaintiffs  
22 have sufficiently pleaded that Defendant Pfeiffer acted with reckless disregard of Kang's right to  
23 safety such that the second prong is satisfied.

24 "The failure of prison officials to protect inmates from attacks by other inmates or from  
25 dangerous conditions at the prison violates the Eighth Amendment when two requirements are met:  
26 (1) the deprivation alleged is, objectively, sufficiently serious; and (2) the prison official is,  
27 subjectively, deliberately indifferent to inmate health or safety." *Luttrell*, 2020 WL 5642613, at \*3  
28 (citing *Farmer v. Brennan*, 511 U.S. 825, 834 (1994)). "Deliberate indifference entails something

1 more than mere negligence but is satisfied by something less than acts or omissions for the very  
2 purpose of causing harm or with knowledge that harm will result.” *Hearns v. Terhune*, 413 F.3d 1036,  
3 1040 (9th Cir. 2005) (internal quotations omitted) (citing *Farmer*, 511 U.S. at 835).

4 Here, Plaintiffs adequately allege deliberate indifference to inmate safety as to Defendant  
5 Pfeiffer. The FAC alleges that Defendants “were fully aware of rival factions inside the prison.”  
6 FAC ¶ 16. Plaintiffs further allege that Kang submitted a complaint to the prison and to CDCR  
7 stating “that his and the lives of his friend group were in danger due to the conduct of the correctional  
8 officers, including Officer Custer” because they planned to “target him by placing him in the  
9 recreation yard by himself to get attacked by a rival group.” FAC ¶ 14. Plaintiffs further allege that  
10 Kang’s group submitted other similar complaints. The FAC alleges that Defendant Pfeiffer failed to  
11 investigate or address these complaints. The FAC further alleges that Kang was “plac[ed]” in the  
12 recreational yard with rivals and was denied an ally to be present with him. FAC ¶ 19. He died due to  
13 injuries he sustained from the attack by rival inmates on the recreational yard.

14 Therefore, Plaintiffs have sufficiently pleaded that Defendant Pfeiffer knew about the  
15 increased risk to Kang’s safety should he be placed in the yard with a rival group without protection or  
16 allies and that he knew of Kang’s concerns that Defendant Custer and other officers intended to place  
17 Kang on the yard alone to be attacked by rival inmates. Accepting the FAC’s allegations as true,  
18 Defendant Pfeiffer’s failure to investigate Kang’s complaint against the correctional officers and to  
19 prevent the correctional officers from placing Kang on the yard alone with a rival group resulted in the  
20 attack on Kang and his death. Thus, Plaintiffs have sufficiently pleaded that Defendant Pfeiffer acted  
21 with deliberate indifference to Kang’s safety. *See, e.g., Luttrell*, 2020 WL 5642613, at \*4 (deliberate  
22 indifference adequately pleaded where the correctional officers “knew about the increased risk to  
23 [p]laintiff’s safety the longer he remained housed in the same cell as his two assailants and  
24 [correctional officers’] failure to take steps to remove him from the risk resulted in his ultimate  
25 victimization”). Because Plaintiffs adequately allege deliberate indifference as to Warden Pfeiffer,  
26 which necessarily entails reckless disregard, Plaintiffs meet the specific intent requirement under the  
27 Bane Act as to Warden Pfeiffer as to Kang’s right to safety under the Eighth Amendment and his  
28 rights under Article 1 of the California Constitution. Therefore, Plaintiffs have sufficiently pleaded a

1 claim against Defendant Pfeiffer under the Bane Act as to his conduct with respect to inmate Kang's  
2 safety.

3 However, the Court finds that the FAC fails to allege specific facts sufficient to establish  
4 deliberate indifference by either Defendant as to Kang's serious medical needs. The FAC alleges that  
5 Kang died approximately 40 minutes after being attacked in the yard, and that he was treated at the  
6 prison for his injuries during that brief period. Plaintiffs' general allegations that Defendants failed to  
7 provide adequate medical care to Kang and that Defendants "failed to timely summon medical care  
8 despite knowledge of the need for immediate medical care and . . . to take reasonable action to  
9 summon such medical care for Sidney Kang," FAC ¶¶ 21, 72, do "not describe the extent of the delay,  
10 the circumstances surrounding the delay, or what [defendants] could reasonably have done in the  
11 interim given the alleged extent of [the] injuries." *See Miles v. Cnty. of Alameda*, Case No. 22-cv-  
12 06707-WHO, 2023 WL 2766663, at \*12 (Apr. 3, 2023) (finding deliberate indifference was not  
13 adequately pleaded by an allegation that defendants "failed to timely summon medical care" for the  
14 decedent "despite becoming aware of his life-threatening injuries and obvious need for treatment" and  
15 collecting cases finding similarly).

16 Plaintiffs have adequately alleged a Bane Act claim against Defendants for violation of Kang's  
17 right to be free from deliberate indifference to safety under the Eighth Amendment and violation of  
18 Kang's right to safety under Article 1 of the California Constitution. Accordingly, the Court denies  
19 the motion to dismiss Plaintiffs' Bane Act claim as to both Defendants. However, Defendants' motion  
20 to dismiss is granted as to Plaintiffs' sub-claim under the Bane Act that Defendants violated Kang's  
21 right to be free from deliberate indifference to serious medical needs. As Plaintiffs may be able to  
22 allege additional facts concerning their serious medical needs sub-claim under the Bane Act, the Court  
23 will grant Plaintiffs leave to file a second amended complaint repleading the Bane Act claim within  
24 thirty (30) days from the date of this Order. *See, e.g., Zwargs v. City of San Luis Obispo*, Case No. CV  
25 21-3525-DMG (AFMx), 2022 WL 2189538, at \*3-4 (Feb. 16, 2022) (dismissing Bane Act claim with  
26 leave to amend when "additional allegations could cure the deficiencies").

27 ///

28 ///

1           **B.     Intentional Infliction of Emotional Distress**

2           On March 27, 2024, the parties stipulated to a dismissal with prejudice of the intentional  
3           infliction of emotional distress claim pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii).  
4           Doc. 22. The Court construed the stipulation as a non-opposition to the motion to dismiss as to that  
5           claim. Doc. 23; *see Hells Canyon Preservation Council v. U.S. Forest Service*, 403 F.3d 683, 688 (9th  
6           Cir. 2005) (Rule 41(a)(1) “does not allow for piecemeal dismissal”). Plaintiffs confirmed in their  
7           response to the motion to dismiss that they do not oppose the dismissal of the intentional infliction of  
8           emotional distress claim. Doc. 24. Given Plaintiffs’ non-opposition to Defendants’ partial motion to  
9           dismiss as to this claim, the Court need not reach the merits of the issue. *See, e.g., Sullivan v. Luna*,  
10           Case No. 2:22-cv-07910-JWH-MAA, 2023 WL 9119245, at \*2 (C.D. Cal. 2023) (construing notice of  
11           non-opposition as consent to granting motion at issue).

12           The Court, therefore, grants Defendants’ partial motion to dismiss as to the intentional  
13           infliction of emotional distress claim.

14           **IV.    Conclusion and Order**

15           Based upon the foregoing, Defendants’ partial motion to dismiss, Docs. 15, 21, is **GRANTED**  
16           in part and **DENIED** in part.

17           Plaintiffs may file a second amended complaint consistent with this Order within thirty (30)  
18           days of the filing of the Order.

19  
20  
21           IT IS SO ORDERED.

22           Dated: May 4, 2024



23           

---

24           UNITED STATES DISTRICT JUDGE

25  
26  
27  
28